

**KINLEY SIMPSON ASSOCIATES**

7901 Stoneridge Drive, #404  
Pleasanton, CA 94588-2842  
510-463-0404  
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**RECEIVED**

**OCT 18 1994**

**EX PARTE OR LATE FILED**

October 14, 1994

**FCC MAIL ROOM**

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

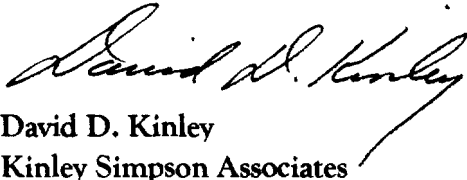
DOCKET FILE COPY ORIGINAL

Re: Hardship Rate Relief Petition-Horizon Cable TV, Inc.  
Fifth Order in MM Docket Nos. 92-266, 93-215/FCC 94234  
(September 26, 1994)

Dear Mr. Caton:

Enclosed are an original and 14 copies of a Hardship Rate Relief Petition for filing and distribution to each commissioner on behalf of Horizon Cable TV, Inc.

Sincerely,

  
David D. Kinley  
Kinley Simpson Associates

No. of Copies rec'd  
List ABCDE

0814

EX PARTE OR LATE FILED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

OCT 18 1994

In the Matter of )  
 )  
Horizon Cable TV, Inc. )  
 )  
Petition for Hardship Rate Relief )

FCC MAIL ROOM

To: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR HARDSHIP RATE RELIEF

David D. Kinley  
KINLEY SIMPSON ASSOCIATES  
7901 Stoneridge Drive, Suite 404  
Pleasanton, CA 94588-3600  
(510) 463-0404

October 14, 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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**OCT 18 1994**

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In the Matter of )  
 )  
Horizon Cable TV, Inc. )  
 )  
Petition for Hardship Rate Relief )

To: The Commission

**PETITION FOR HARDSHIP RATE RELIEF**

Horizon Cable TV, Inc. ("Horizon") hereby petitions the Commission for hardship rate relief. Horizon submits this petition pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. sec. 1.3 (1993) and the Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking in MM Docket Nos. 92-266 and 93-215, FCC 94-234 (released September 26, 1994) (hereinafter "*Fifth Order*").

**Summary**

Horizon is a small company (four systems serving 2,269 subscribers in Marin County, California) owned and operated by a husband and wife team. The company has significant negative cash flow because the revenue generated by its monthly rates does not cover operating expenses and debt service, let alone allow for capital improvements.

Horizon has been unable to raise its rates due to the Commission's rate freeze and the rate regulation by Marin County. It cannot increase its rates under the Commission's benchmark methodology, and it cannot afford the assistance necessary to prepare a cost-of-service showing.

The resulting cash shortfall has impaired any ability to attract capital. In fact, it has jeopardized the company's existing financing. Horizon's current loan must be repaid in full by December 15, 1994. With the continuing cash shortfall, Horizon has been unable to any commitments to refinance its loan. Horizon must receive expedited relief in the form of a rate increase if it is to have any chance of refinancing its debt.

## **I. Introduction and Background**

Horizon operates four systems in Marin County, California. These systems serve Hamilton Field and the communities of Lucas Valley, Stinson Beach and West Marin. The four systems have a total of 2,269 subscribers as of September 30, 1994.

In June 1991, Horizon obtained a loan from Silicon Valley Bank in Palo Alto, California to finance the acquisition of the systems and a program of capital improvements for them. In addition, Horizon planned to use these funds for extension of its service by building a new system in the Dillon Beach/Tomales area of northwestern Marin County. The new system has never been built. The Commission's freeze on basic monthly rates was imposed shortly after Horizon completed its other capital improvements for its existing subscribers. As a result, Horizon has been forced to use the remaining proceeds of the loan to cover monthly cash shortfalls.

In the period from June 1991 to April 1993, prior to the Commission's rate freeze, Horizon constructed three line extensions totaling 10.5 miles of additional cable plant from its Stinson Beach and West Marin systems to make service available to approximately 400 homes. Horizon also rebuilt 4 miles of cable plant to improve signal quality. Eleven channels were added to the system serving Stinson Beach and eight

channels to the system serving West Marin. There has been no increase in the rate for Hamilton Field since October 1992, and in the other three systems, since June 1991

## **II. Regulatory Status**

The County of Marin filed its certification to regulate the rates of Horizon on April 14, 1994. The initial date of regulation pursuant to this certification was May 15, 1994.

Horizon filed its benchmark calculations with the County on September 1, 1994.

Horizon then notified the County that it was electing the cost of service methodology.

However, because of the financial situation outlined below, Horizon has not been able to afford the outside professional assistance necessary to complete the Commission's forms and make a cost of service showing.

## **II. Cash Shortfall**

Horizon has been operating since June 1993 with a monthly cash shortfall after payment of operating expenses and debt service. As shown in Exhibit A, by July 31, 1994, the cumulative cash flow deficit had reached \$69,572. Horizon could not increase its rates during this period to cover the shortfall because of the Commission's rate freeze and the subsequent certification by Marin County. Therefore, as the cash shortage became more acute, Horizon began reducing its operating expenses in any way it could. This included laying off two of its six employees and reducing by eight percent the salaries of the husband and wife owner-operators, who were two of the remaining four employees. In addition, one of the service trucks was "mothballed," and the cellular phone in the remaining truck was disconnected.

Horizon has reduced expenses by a total of \$49,304 during the period from June 1993 to July 31, 1994. This reduction has been detrimental to the service Horizon is able to

provide to its subscribers. Horizon would not have made this reduction but for the impact of the Commission's rate regulations. As of October, 1994, Horizon continues to experience a cash shortfall, after operating expenses and debt service, of approximately \$8,000 per month.

As shown in Exhibit A, Horizon does not have the ability to meet its costs, including costs associated with the aforementioned capital improvements in the systems since 1991 and its required payments of interest and principal under the loan agreement with Silicon Valley Bank.

In view of these circumstances, Horizon is unable to attract the capital necessary to continue with its planned upgrades and service improvements in the systems. In addition, Horizon does not have the resources to obtain an independent analysis of its financial situation in support of this petition.

### III. Financial Condition

The initial principal amount of the loan from Silicon Valley Bank was \$1,425,575. The present loan balance is \$1,284,167, as of September 14, 1994. The balance of the principal is payable in full on December 15, 1994. Because of the continuing cash shortfall described above, Horizon will be unable even to retain its existing debt financing, let alone attract new capital without special relief in the form of a rate increase.

While Horizon has not yet defaulted on any interest and principal payments, Horizon is not in compliance with all the terms of its loan agreement with Silicon Valley Bank. As of July 31, 1994, it is not in compliance with the following terms of the loan agreement

(see “Financial Covenants” on page 4 of Business Loan Agreement, attached as Exhibit B):

1. ratio of cash flow to debt service
2. maintenance of profitability on a rolling three-month basis
3. no quarterly or year end loss in excess of \$20,000

#### IV. Hardship Rate Relief

In the *Fifth Order*, the Commission articulated standards for hardship rate relief for an operator that concludes the benchmark/cost-of-service regulations threaten its financial health or ability to provide cable service. *Fifth Order*, footnote 20 (hereinafter “*Footnote 20*”). Horizon has examined both benchmark and cost-of-service regulation as it would be applied to its systems. To the best of its knowledge, Horizon believes that its regulated rates do not comply with the Commission’s rules under the benchmark methodology. In addition, Horizon does not have the personnel on staff to prepare a cost-of-service showing. As shown in Exhibit A, Horizon does not have the financial resources to retain outside assistance in preparing such a showing.

Therefore, Horizon has concluded that the benchmark/cost-of-service regulations threaten its financial health. In view of these circumstances, Horizon must “rely on existing data rather than expending resources on obtaining an independent analysis of its financial situation.” *Footnote 20*. The cash shortfall shown in Exhibit A supports this conclusion.

Since Horizon cannot meet its current costs from current revenues, it requests expeditious approval of an increase in the basic monthly rate. Because of the different rates and channel line-ups in each system, Horizon requests the right to increase its

monthly rates for basic service in a range of up to \$6.50. This would set the maximum rate for basic monthly service within a range of \$20.50-26.92.

The increase is necessary to:

1. recover much of the amount already lost through the shortfall;
2. restore some of the operating expenses to the company's pre-rate freeze level of service to our customers and sustain them at that level for at least the next 12 months; and
3. attract additional financing to repay the amounts owed to Horizon's present lender and reactivate the program of service extensions and improvements.

In light of the due date of December 15, 1994 for the loan balance, and the consequent need to refinance the loan as soon as possible, Horizon plans to implement an increase within the range requested immediately upon receiving the approval of the Commission, subject of course to the required notice period.


## V. Conclusion

Horizon meets the standards of *Footnote 20*. Therefore, the Commission should expeditiously grant this petition for hardship rate relief.



Respectfully submitted,

Horizon Cable TV, Inc.

by: 

David D. Kinley  
Kinley Simpson Associates  
7901 Stoneridge Drive, Suite 404  
Pleasanton, CA 94588-3600  
(510) 463-0404  
Its Attorneys

October 14, 1994

# DECLARATION

I, Susan M. Daniel, declare the following:

1. I am Chief Financial Office and Secretary of Horizon Cable TV, Inc.
2. I have reviewed the foregoing Petition for Hardship Rate Relief to be filed with the Federal Communications Commission.
3. The facts stated therein are true and correct to the best of my knowledge and belief.

Signed under penalty of perjury this 14th day of October, 1994.

A handwritten signature in cursive script, appearing to read "Susan M. Daniel", written over a horizontal line.

Susan M. Daniel

**CERTIFICATE OF SERVICE**

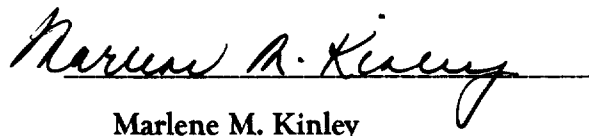
I hereby certify that copies of the foregoing PETITION FOR HARDSHIP RATE RELIEF have been delivered by depositing with the U.S. Postal Service, First Class mail postage prepaid, to the following:

Ms. Meredith J. Jones  
Chief, Cable Services Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Ms. Susan Cosentino  
Small System Liaison  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Ms. Catharine B. Barnes  
Chairperson  
Marin County Cable Rate Regulation  
Joint Powers Authority  
Civic Center, Room 815  
San Rafael, CA 94903

Mr. Jere W. Glover  
Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, S.W.  
Washington, DC 20416

  
Marlene M. Kinley

## Exhibit A

### Cash Flow Summaries Horizon Cable TV

Periodic Cash Flow Summaries			
	Actual	Estimated	
	Fiscal Year Ended July 31, 1994	(Current Rates) 8/1/94 - 12/31/94	(New Rates) 1/1/95 - 7/31/95
Total Revenue	715,107	297,500	498,500
Expenditures			
Operating	462,255	195,000	295,000
Capital	74,979	29,000	49,000
Total Expenditures	537,234	224,000	344,000
Cash Flow Before Debt Service	177,873	73,500	154,500
Debt Service Requirements			
Interest	131,539	58,750	81,543
Principal	115,906	55,000	59,000
Total Debt Service Requirements	247,445	113,750	140,543
Cash Flow for Period	(69,572)	(40,250)	13,957

Cumulative Cash Flow Summaries			
Cumulative Cash Flow - Beginning	(25,247)	(94,819)	(135,069)
Cash Flow for Period	(69,572)	(40,250)	13,957
Cumulative Cash Flow - Ending	(94,819)	(135,069)	(121,112)

EXHIBIT B

## BUSINESS LOAN AGREEMENT

**Borrower:** HORIZON CABLE TV, INC.  
P.O. Box 937  
Fairfax, CA 94978

**Lender:** Silicon Valley Bank  
P.O. Box 3762  
3000 Lakeside Drive  
Santa Clara, CA 95054

THIS BUSINESS LOAN AGREEMENT between HORIZON CABLE TV, INC. ("Borrower") and Silicon Valley Bank ("Lender") is made and executed on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans and other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. All such loans and financial accommodations, together with all future loans and financial accommodations from Lender to Borrower, are referred to in this Agreement individually as the "Loan" and collectively as the "Loans." Borrower understands and agrees that: (a) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements, as set forth in this Agreement; (b) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (c) all such Loans shall be and shall remain subject to the following terms and conditions of this Agreement.

**TERM.** This Agreement shall be effective as of November 10, 1993, and shall continue thereafter until all indebtedness of Borrower to Lender has been performed in full and the parties terminate this Agreement in writing.

**DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Agreement.** The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

**Borrower.** The word "Borrower" means HORIZON CABLE TV, INC.. The word "Borrower" also includes, as applicable, all subsidiaries and affiliates of Borrower as provided below in the paragraph titled "Subsidiaries and Affiliates."

**CERCLA.** The word "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

**Cash Flow.** The words "Cash Flow" mean net income after taxes, and exclusive of extraordinary gains and income, plus depreciation and amortization.

**Collateral.** The word "Collateral" means and includes without limitation all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**Debt.** The word "Debt" means all of Borrower's liabilities excluding Subordinated Debt.

**ERISA.** The word "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

**Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section titled "EVENTS OF DEFAULT."

**Grantor.** The word "Grantor" means and includes each and all of the persons or entities granting a Security Interest in any Collateral for the Indebtedness, including without limitation all Borrowers granting such a Security Interest.

**Guarantor.** The word "Guarantor" means and includes without limitation, each and all of the guarantors, sureties, and accommodation parties in connection with any Indebtedness.

**Indebtedness.** The word "Indebtedness" means and includes indebtedness evidenced by any and all notes, letters of credit, or credit agreements, including all principal and interest, together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

**Lender.** The word "Lender" means Silicon Valley Bank, its successors and assigns.

**Liquid Assets.** The words "Liquid Assets" mean Borrower's cash on hand plus Borrower's receivables.

**Loan.** The word "Loan" or "Loans" means and includes any and all commercial loans and financial accommodations from Lender to Borrower, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

**Note.** The word "Note" means Borrower's promissory note or notes, if any, evidencing Borrower's Loan obligations in favor of Lender, as well as any substitute, replacement or refinancing note or notes therefor.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Security Agreement.** The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

**Security Interest.** The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**SARA.** The word "SARA" means the Superfund Amendments and Reauthorization Act of 1986 as now or hereafter amended.

**Subordinated Debt.** The words "Subordinated Debt" mean indebtedness and liabilities of Borrower which have been subordinated by written agreement to indebtedness owed by Borrower to Lender in form and substance acceptable to Lender.

**Tangible Net Worth.** The words "Tangible Net Worth" mean Borrower's total assets excluding all intangible assets (i.e., goodwill, trademarks, patents, copyrights, organizational expenses, and similar intangible items, but including leaseholds and leasehold improvements) less total Debt.

**Working Capital.** The words "Working Capital" mean Borrower's current assets, excluding prepaid expenses, less Borrower's current liabilities.

**BUSINESS LOAN AGREEMENT  
(Continued)**

**REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender as of the date of this Agreement and as of the date of each disbursement of Loan proceeds:

**Organization.** Borrower is a corporation which is duly organized, validly existing, and in good standing under the laws of the State of California. Borrower has the full power and authority to own its properties and to transact the businesses in which it is presently engaged or presently proposes to engage. Borrower also is duly qualified as a foreign corporation and is in good standing in all states in which the failure to so qualify would have a material adverse effect on its businesses or financial condition.

**Authorization.** The execution, delivery, and performance of this Agreement and all Related Documents by Borrower, to the extent to be executed, delivered or performed by Borrower, have been duly authorized by all necessary action by Borrower; do not require the consent or approval of any other person, regulatory authority or governmental body; and do not conflict with, result in a violation of, or constitute a default under (a) any provision of its articles of incorporation or organization, or bylaws, or any agreement or other instrument binding upon Borrower or (b) any law, governmental regulation, court decree, or order applicable to Borrower.

**Financial Information.** Each financial statement of Borrower supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

**Legal Effect.** This Agreement constitutes, and any instrument or agreement required hereunder to be given by Borrower when delivered will constitute, legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

**Properties.** Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used, or filed a financing statement under, any other name for at least the last five (5) years.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Agreement, shall have the same meanings as set forth in the "CERCLA," "SARA," the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (a) During the period of Borrower's ownership of the properties, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about any of the properties. (b) Borrower has no knowledge of, or reason to believe that there has been (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of any of the properties, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters. (c) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the properties shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about any of the properties; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation those laws, regulations and ordinances described above. Borrower authorizes Lender and its agents to enter upon the properties to make such inspections and tests as Lender may deem appropriate to determine compliance of the properties with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the properties for hazardous waste. Borrower hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Borrower's ownership or interest in the properties, whether or not the same was or should have been known to Borrower. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the indebtedness and the termination or expiration of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the properties, whether by foreclosure or otherwise.

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** To the best of Borrower's knowledge, all tax returns and reports of Borrower that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

**Lien Priority.** Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

**Binding Effect.** This Agreement, the Note and all Security Agreements directly or indirectly securing repayment of Borrower's Loan and Note are binding upon Borrower as well as upon Borrower's successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**Commercial Purposes.** Borrower intends to use the Loan proceeds solely for business or commercial related purposes.

**Employee Benefit Plans.** Each employee benefit plan as to which Borrower may have any liability complies in all material respects with all applicable requirements of law and regulations, and (i) no Reportable Event nor Prohibited Transaction (as defined in ERISA) has occurred with respect to any such plan, (ii) Borrower has not withdrawn from any such plan or initiated steps to do so, and (iii) no steps have been taken to terminate any such plan.

**Location of Borrower's Offices and Records.** The chief place of business of Borrower and the office or offices where Borrower keeps its records concerning the Collateral is located at P.O. Box 937, Fairfax, CA 94978.

**Information.** All information heretofore or contemporaneously herewith furnished by Borrower to Lender for the purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all information hereafter furnished by or on behalf of Borrower to Lender will be, true and accurate in every material respect on the date as of which such information is dated or certified; and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading.

**Survival of Representation and Warranties.** Borrower understands and agrees that Lender is relying upon the above representations and warranties in making the above referenced Loan to Borrower. Borrower further agrees that the foregoing representations and warranties shall be

# BUSINESS LOAN AGREEMENT (Continued)

continuing in nature and shall remain in full force and effect until such time as Borrower's Loan and Note shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**AFFIRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, while this Agreement is in effect, Borrower will:

**Litigation.** Promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition, and (b) all litigation and claims and all threatened litigation and claims affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

**Financial Records.** Maintain its books and records in accordance with generally accepted accounting principles, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**Financial Statements.** Furnish Lender with, as soon as available, but in no event later than thirty (30) days after the end of each month, Borrower's balance sheet and profit and loss statement for the period ended, prepared and certified as correct to the best knowledge and belief by Borrower's chief financial officer or other officer or person acceptable to Lender. All financial reports required to be provided under this Agreement shall be prepared in accordance with generally accepted accounting principles, applied on a consistent basis, and certified by Borrower as being true and correct.

**Additional Information.** Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as Lender may request from time to time.

**Financial Covenants and Ratios.** Comply with the following covenants and ratios:

For purposes of this Agreement and to the extent the following terms are utilized in this Agreement, the term "Tangible Net Worth" shall mean Borrower's total assets excluding all intangible assets (i.e., goodwill, trademarks, patents, copyrights, organizational expenses, and similar intangible items, but including leaseholds and leasehold improvements) less total Debt. The term "Debt" shall mean all of Borrower's liabilities excluding Subordinated Debt. The term "Subordinated Debt" shall mean indebtedness and liabilities of Borrower which have been subordinated by written agreement to indebtedness owed by Borrower to Lender in form and substance acceptable to Lender. The term "Working Capital" shall mean Borrower's current assets, excluding prepaid expenses, less Borrower's current liabilities. The term "Liquid Assets" shall mean Borrower's cash on hand plus Borrower's receivables. The term "Cash Flow" shall mean net income after taxes, and exclusive of extraordinary gains and income, plus depreciation and amortization. Except as provided above, all computations made to determine compliance with the requirements contained in this paragraph shall be made in accordance with generally accepted accounting principles, applied on a consistent basis, and certified by Borrower as being true and correct.

**Insurance.** Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies reasonably acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such loss payable or other endorsements as Lender may require.

**Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the properties insured; (e) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (f) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral.

**Guaranties.** Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, on Lender's forms, and in the amounts and by the guarantors named below:

<u>Guarantors</u>	<u>Amounts</u>
Kenneth Daniel	Unlimited
Patricia M. Daniel	Unlimited
Kevin Daniel	Unlimited
Susan Daniel	Unlimited
Matrix Cablevision, Inc.	Unlimited
Video Engineering, Inc.	Unlimited

**Other Agreements.** Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

**Loan Proceeds.** Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

**Taxes, Charges and Liens.** Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (a) the legality of the same shall be contested in good faith by appropriate proceedings, and (b) Borrower shall have established on its books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with generally accepted accounting practices. Borrower, upon demand of Lender, will furnish to Lender evidence of payment of the assessments, taxes, charges, levies, liens and claims and will authorize the appropriate governmental official to deliver to Lender at any time a written statement of any assessments, taxes, charges, levies, liens and claims against Borrower's properties, income, or profits.

**Performance.** Perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Borrower and Lender in a timely manner, and promptly notify Lender if Borrower learns of the occurrence of any event which constitutes an Event of Default under this Agreement.

**Operations.** Substantially maintain its present executive and management personnel; conduct its business affairs in a reasonable and prudent manner and in compliance with all applicable federal, state and municipal laws, ordinances, rules and regulations respecting its properties, charters, businesses and operations, including without limitation, compliance with the Americans With Disabilities Act and with all minimum funding standards and other requirements of ERISA and other laws applicable to Borrower's employee benefit plans.

**Inspection.** Permit employees or agents of Lender at any reasonable time to inspect any and all collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books,

# BUSINESS LOAN AGREEMENT (Continued)

accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

**Compliance Certificate.** Unless waived in writing by Lender, provide Lender at least annually and at the time of each disbursement of Loan proceeds with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

**Additional Assurances.** Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

**NEGATIVE COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

**Indebtedness and Liens.** (a) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (b) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets, or (c) sell with recourse any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (a) Engage in any business activities substantially different than those in which Borrower is presently engaged, (b) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, dissolve or transfer or sell Collateral out of the ordinary course of business, or (c) pay any dividends on Borrower's stock (other than dividends payable in its stock and except as may be statutorily required for Subchapter S corporations) or purchase or retire any of Borrower's outstanding shares or alter or amend Borrower's capital structure.

**Loans, Acquisitions and Guaranties.** (a) Loan, invest in or advance money or assets, (b) purchase, create or acquire any interest in any other enterprise or entity, or (c) incur any obligation as surety or guarantor other than in the ordinary course of business.

**CESSATION OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (a) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (b) Borrower becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (c) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (d) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender.

**DEFAULT RATE.** Upon default, including failure to pay upon final maturity, Lender, at its option, may do one or both of the following: (a) increase the variable interest rate on this Note to five percentage points (5.000%) over the Interest Rate otherwise payable thereunder, and (b) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the rate provided in the Note.

**FINANCIAL COVENANTS.** Maintain, on monthly basis, a maximum total debt to tangible net worth ratio of 3.00 to 1.00; a minimum debt service ratio 1.00 to 1.00; and a minimum net annual operating cash flow of \$18,000.00. Furthermore, maintain profitability on a rolling three month basis, with allowance for a quarterly or year end loss not to exceed \$20,000.00.

**EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Default on Indebtedness.** Failure of Borrower to make any payment when due on the Loans.

**Other Defaults.** Failure of Borrower or any Grantor to comply with or to perform when due any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of Borrower to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default In Favor of Third Parties.** Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation, or statement made or furnished to Lender by or on behalf of Borrower or any Grantor under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any Security Agreement to create a valid and perfected Security Interest) at any time and for any reason.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, insolvency, appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower, any creditor of any Grantor against any collateral securing the Indebtedness, or by any governmental agency. This includes a garnishment, attachment, or levy on or of any of Borrower's deposit accounts with Lender.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**EFFECT OF AN EVENT OF DEFAULT.** If any Event of Default shall occur, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate and, at Lender's option, all Loans immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Agreement has been delivered to Lender and accepted by Lender in the State of California. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Santa Clara County, the State of California. This



# BUSINESS LOAN AGREEMENT (Continued)

**Agreement shall be governed by and construed in accordance with the laws of the State of California.**

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Multiple Parties; Corporate Authority.** All obligations of Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower. This means that each of the persons signing below is responsible for all obligations in this Agreement.

**Consent to Loan Participation.** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loans to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy it may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loans and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loans irrespective of the failure or insolvency of any holder of any interest in the Loans. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

**Costs and Expenses.** Borrower agrees to pay upon demand all of Lender's out-of-pocket expenses, including attorneys' fees, incurred in connection with the preparation, execution, enforcement and collection of this Agreement or in connection with the Loans made pursuant to this Agreement. Lender may pay someone else to help collect the Loans and to enforce this Agreement, and Borrower will pay that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

**Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Borrower, notice to any Borrower will constitute notice to all Borrowers. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address(es).

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**Subsidiaries and Affiliates of Borrower.** To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used herein shall include all subsidiaries and affiliates of Borrower. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any subsidiary or affiliate of Borrower.

**Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower shall bind its successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Agreement or any interest therein, without the prior written consent of Lender.

**Survival.** All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement shall be considered to have been relied upon by Lender and will survive the making of the Loan and delivery to Lender of the Related Documents, regardless of any investigation made by Lender or on Lender's behalf.

**Time Is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waiver.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any obligations of Borrower or of any Grantor as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent in subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**BUSINESS LOAN AGREEMENT**  
(Continued)

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BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF NOVEMBER 10, 1993.

BORROWER:

HORIZON CABLE TV, INC.

By: 

Name: Kevin Daniel Title: President

LENDER:

Silicon Valley Bank

By: 

Authorized Officer